I therefore think the Magistrate was wrong in holding that section 27 had no application to this power of attorney and in holding that authority to claim and sue could be derived from it.

The appeal is allowed with costs. The decree in the Magistrate's Court is set aside and it is ordered that the suit be dismissed with costs.

*Appeal allowed. Decree of Magistrate set aside and suit dismissed.*

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[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

June 10, 1940.

## KOK HO LENG vs. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 11 of 1940]

*Evidence Enactment (Cap. 10), sections 6 and 7 —Telephone message—Admissibility of.*

A telephone message received on the premises during a raid under the Betting Enactment is under certain circumstances admissible in evidence under sections 6 and 7 of the Evidence Enactment.

CRIMINAL APPEAL.

*Balfour Ross and Yeoh Cheang Lee* for appellant.

*T. V.* A. *Brodie*, Deputy Public Prosecutor, for respondent.

**Murray-Aynsley, J.**—This is an appeal against a conviction under section 4 (c) of the Betting Enactment. There was a raid on premises occupied by the appellant. From the conduct of the persons on the premises and of the appellant himself and what was found on the premises I think that the prosecution had clearly established this case even without the aid of the presumptions under section 10 of the Enactment. The statement of the appellant did nothing to dispel any presumption that the evidence of the prosecution might have raised.

But there was one point of some interest, viz., whether a telephone message to the premises during the raid was admissible in evidence. In an unreported case Mr. Justice Howes held that such a message was not admissible. I personally am inclined to think that it is admissible under two sections: 6 which is the section which deals with what are known as "*res gestae*" in England. I think that a telephone message has some analogy to the shouting of the by-standers; further in view of the subsequent cutting of the wire I think that the telephone message may be relevant under section 7.

In any case I don't think that this is a matter which would have any great weight in determining the case, and even if this was wrongly admitted I do not consider that there was any miscarriage of justice.

The penalty is a fairly heavy one, but in cases of this kind penalties must be severe. It is not possible to form any idea of the extent of the business carried on, but the reason for that is that the appellant did his best to get rid of evidence when the raid took place.

*Appeal dismissed.*